IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2985 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

F S MALIK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2985 of 2003

MR PARESH UPADHYAY for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 25/10/2004

ORAL JUDGEMENT

In this petition the petitioner has challenged order dated 28.1.2003, passed by the Disciplinary Authority, by which the petitioner is ordered to be removed from service.

2. On 10th August, 2000, a charge-sheet came to be issued against the petitioner alleging inter-alia that while he was discharging his duty as a Mamlatdar, Pardari, Dist.Rajkot between 7.9.1987 to 4.3.1989, an amount of Rs. 1,79,543.58 came to be withdrawn through cheque No. 19739 dated 14.12.1988, which amount the petitioner has not credited for in the cash book or the Rojmel, nor has it been paid to the claimants. It is further alleged that another amount of Rs. 21,027/- was withdrawn by the petitioner by cheque No. 19738 dated 12.2.1988, which amount was withdrawn through Shri A.A.Doshi and this amount also has not been accounted for in the cash book, Rojmel, Taluka Form No.17, nor has it been paid to the claimants. It was therefore alleged that the petitioner has committed serious misconduct in connivance with Shri A.A Doshi (who was at the relevant time working as a Clerk in the Mamlatdar's office).

3. Pursuant to the said charge-sheet, a Departmental enquiry was conducted against the petitioner and despite certain objections from the petitioner, the enquiry was concluded and the enquiry officer found that the charges against the petitioner were proved. After affording an opportunity to make his representation against the enquiry officer's report dated 11th Sept, 2002, the Disciplinary Authority found that the charges against the petitioner are proved and considering the gravity of the misconduct, imposed penalty of removal of the petitioner from service by order dated 28.1.2003, which is impugned in the present petition, as noted above.

4. In support of the challenge to the order of the Disciplinary Authority, learned Counsel for the petitioner has raised number of contentions in the petition as well as in his oral submissions before the Court.

5. Considering certain peculiar aspects of the matter, I find that the present petition is required to be disposed of by remanding the matter back to the Disciplinary Authority, without examining all the contentions raised by the petitioner and without dealing with the submissions of the learned AGP for the respondent.

6. The petitioner has been from the very beginning clamouring for production of certain documents, which the petitioner contends would enable him to defend himself and to establish that he has not committed any misconduct. On behalf of the petitioner it has been

strongly urged by the learned Counsel Shri Upadhyay that there was gross delay in initiation and completion of the Departmental enquiry and by further not providing necessary documents, the respondent has breached the principles of natural justice. He has submitted that the petitioner had not misappropriated the amounts in question and if the necessary documents were made available, the petitioner could have pointed out that the amount was perhaps lying in some other account of the Government itself. For the above purpose, the petitioner has demanded certain vital documents which were not given access to and the enquiry therefore is vitiated. I will advert my attention to this ground at a slightly later stage.

7. The petitioner has also contended that the petitioner had requested for examining Shri A.A Doshi as his witness in the enquiry, which according to the petitioner would have enabled the petitioner to extract the truth from Shri Doshi, who was therefore an important witness who ought to have examined, or at any rate permitted to be examined by the petitioner. The petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Balbirchand Vs. Food Corporation of India and ors. reported in AIR 1997 SC 2229 and contended that simply because a common enquiry being conducted, it could not enable the Government to withhold the permission to examine Shri Doshi as a witness in the enquiry.

8. As noted earlier, though number of other contentions have been raised on behalf of the petitioner, I find that the entire issue is required to be remanded back to the Disciplinary Authority for further consideration, only by upholding of the above two contentions raised by the petitioner.

9. It is not in dispute that during the course of enquiry it was ordered by the enquiry officer that the cash box and heraferi register were to be made available to the petitioner, however at no stage of the enquiry the said documents were supplied to the petitioner. The petitioner had also been demanding the Taluka Form No.17 from the respondent. Admittedly, this document was also not made available to the petitioner during the course of enquiry.

10. It is the contention of the petitioner that had these documents been made available to him during the course of enquiry, it might have been possible for the petitioner to point out that the amounts withdrawn by the

cheques issued by the petitioner, have been accounted for in some other heading with the Government and that the amount is not misappropriated by anyone.

11. During the course of the arguments, considering the peculiar nature of the matter, to satisfy my conscience and at the joint request and concessions of the parties, learned AGP was requested to make available the above documents. Accordingly, learned AGP was kind enough to call for and supply to the Court all the materials which are available with the authority and submitted that from the said documents it can be seen that the amounts in question are not credited anywhere else. However, considering the complex nature of the entries and its movements, it is not possible for this Court to conclude, without any further assistance, whether the amounts in question have been accounted for under any other heads or not. Such an exercise can be undertaken only by the Disciplinary Authority who would have the necessary wherewithal to appreciate the effect of several entries to be found in different registers. For this purpose I find it would be in the interest of justice to remand the matter back to the Disciplinary Authority for further consideration after supplying to the petitioner the above mentioned documents. It would also be open to the Government to produce after necessary proof thereof, additional documents if found necessary. If such additional documents are sought to be produced, it will be open for the petitioner to demand relevant documents and upon satisfying the Disciplinary Authority regarding its relevance, the Disciplinary Authority shall consider the request of the petitioner.

12. So far as the question of examination of Shri A.A. Doshi is concerned, there also I find that the Disciplinary Authority ought to have permitted the petitioner to examine the said witness. While the matter is being remanded to the Disciplinary Authority, it will be open for the petitioner to examine Shri A.A.Doshi as his witness and the Disciplinary Authority shall permit such additional evidence to be taken on record.

13. For the purpose of remanding the matter back to the Disciplinary Authority, I quash and set aside the impugned order at Annexure "A" dated 28.1.2003. It is however done for the limited purpose of enabling the Disciplinary Authority to continue with the Disciplinary proceedings from the stage of supplying additional documents and permitting examination of Shri Doshi as witness and thereafter to pass appropriate orders in accordance with law. The question of backwages and other

attending benefits can be decided only after the Disciplinary Authority concludes fresh exercise as directed by this Court. This would also be in consonance with the decision of the Hon'ble Supreme Court in the case of N.T.C (WBAB and O) Ltd. V. Anjan K. Saha, reported in 2004 SCW 4878, where the Hon'ble apex Court following the decision in the case of Managing Director, ECIL, Hyderabad V. B. Karunakar reported in 1994 SC 1074, had taken a similar view.

14. In the result, the petition is allowed in part. Rule is made absolute to the above extent with no order as to costs. It goes without saying that it will be open for the petitioner to challenge any fresh order that may be passed by the Disciplinary Authority, in accordance with law.

Direct service permitted.

(Akil Kureshi, J.)
*/Mohandas